

containing the claimed active ingredient. The subject-matter of Claim 11 is an improved wood or timber product which is resistant to fungi. The claim is not vague, and is described in such terms as would enable those skilled in the art to make and use it. Accordingly, this claim should not be rejected under 35 USC 112, and withdrawal of said rejection is respectfully requested.

Claims 7 and 11 stand rejected under 35 USC 103, as obvious over Schaub in view of Ludwig and European Patent 0,393,846 (L'). Applicants believe that the Examiner intends European Patent 0,393,746.

The Examiner relies on Schaub to show that cyproconazole is known; and relies on the EPO reference and Ludwig to show that triazoles of the type claimed are effective against wood fungi.

Ludwig teaches synergistic mixtures of triadimefone, triadimenol, tebuconazole, hexaconazole or prochloraz with iodopropargyl derivatives, as useful against, e.g. wood-destroying and wood-discoloring fungi.

The EPO reference, on the other hand, is directed towards synergistic mixtures of propiconazole and tebuconazole.

The September 6, 1995 Declaration by Dr. Martin show that prochloraz and triamedafon, two of the azoles mentioned by Ludwig were either insufficient or only of marginal effectiveness in the claimed use. Cyproconazole, on the other hand, was 100% effective. Those skilled in the art, reading the references cited, would never suspect that cyproconazole would demonstrate such superiority, as compared to other azole compounds, against wood-destroying fungi.

This is especially true in view of the fact that the references cited would suggest that a synergistic mixture of fungicides would be required.

The present application is directed to fungicides which combat wood-destroying fungi. As can be seen from the attachments, the wood-destroying fungi indeed belong to the class of the Basidiomycetes, but only to the subclass of the Halobasidiomycetes.

It would have been impossible for anyone to foresee that a compound which is active against fungi of one subclass would also be active against fungi of any other subclass.

Applicants have shown in Dr. Kugler's Declarations of March 24, 1995, September 6, 1995 and October 13, 1994 that commonly known phytopathogenic azole-fungicides, which are similar to cyproconazole show only insufficient activity against the Halobasidiomycetes.

Accordingly, the rejection of Claims 7 and 11 under 35 USC 103, as obvious over Schaub in view of Ludwig and the EPO reference, should now be withdrawn.

Favorable action is respectfully submitted.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Applicants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 02-1445.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess,  
to Deposit Account No. 02-1445.

Respectfully submitted,

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SPRUNG HORN KRAMER & WOODS

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Date 7/10/96